09/148,090

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/148,090	09/03/98	SMITH S	

EXAMINER

PM51/0205

HERBERT M WOLFSON
1213 BROOK DRIVE
WILMINGTON DE 19803

ART UNIT	PAPER NUMBER
3613	4

DATE MAILED: 02/05/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☑ Responsive to communication(s) filed on 1/25/99

☑ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three (3) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☑ Claim(s) 1-8 is/are pending in the application.
Of the above, claim(s) ——— is/are withdrawn from consideration.
☐ Claim(s) ——— is/are allowed.
☑ Claim(s) 1-8 is/are rejected.
☐ Claim(s) ——— is/are objected to.
☐ Claim(s) ——— are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on ——— is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on ——— is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.
☐ received in Application No. (Series Code/Serial Number) ———.
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: ———.

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). ———
☐ Interview Summary, PTO-413
☐ Notice of Draftperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

DETAILED ACTION

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed **terminal disclaimer** in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,437,354 to Smith(354) or claims 1-3 of U.S. Patent No. 5,529,153 to Smith in view of Hanna(076).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims differ from the inventions defined by the noted patents in the

feature of remote connection of parts. The instant claimed invention is an obvious variation of the invention defined in the noted patents.

The secondary reference to Hanna(076) teaches connecting a strut 9 remotely to a source or chamber 101+ by way of a hose.

It would have been obvious at the time the invention was made to one having ordinary skill in the art to which the invention pertains to modify the invention defined by the claims of each of the principal patents to Smith(354) and Smith(153) to form the tilt-control thereof into two parts as taught by Hanna(076) connected together by a fluid pressure hose in that remotely locating one or more of the elements relative to each other provides for facilitating more efficient use of space in the vehicle and provides for securement of the liquid and/or air pressure device in an area of the vehicle or its frame less affected by environmental concerns such as heat, water, dirt, etc. Also, it would have been obvious to one having ordinary skill in the art to make the above modification since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179.

3. Claims 7-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,437,354 to Smith(354) or claims 1-3 of U.S. Patent No. 5,529,153 to Smith(153) in view of Hanna(076) as combined above in paragraph 2 further in view of Hamilton(5026248) or Komossa et al.(4765445).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims differ from the inventions defined by the noted patents in the

feature of remote connection of parts. The instant claimed invention is an obvious variation of the invention defined in the noted patents.

Re claims 7-8, claims 1-16 of U.S. Patent No. 5,437,354 to Smith(354) and claims 1-3 of U.S. Patent No. 5,529,153 to Smith(153) recite the invention except for the feature of the device having a pressure relief or pressure release valve for permitting the release of fluid pressure should the pressure exceed a pre-set or predetermined value .

It would have been obvious at the time the invention was made to one having ordinary skill in the art to which the invention pertains to modify the invention defined by the claims of each of the principal patents to Smith(354) and Smith(153), as modified, to include a pressure relief or pressure release valve as taught by each of the references to Hamilton(5026248) and Komossa et al.(4765445), for permitting the release of fluid pressure should the pressure exceed a pre-set or predetermined value .

4. Applicant's arguments filed January 25, 1999 have been fully considered but they are not persuasive for the above reasons. The examiner agrees with applicant's representative that the Smith patents are not available under 35USC 102 and/or 35USC103. It appears to the examiner that a proper terminal disclaimer would overcome the above double patenting rejections.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication should be directed to Examiner Butler at telephone number (703) 308-2575.

DOUGLAS C. BUTLER
PRIMARY EXAMINER
AU 3613

2/3/99